

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JUDGE DAVID M. GLOVER

DIVISION IV

CACR08-969

March 18, 2009

WILBERT JOHNSON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
SEVENTH DIVISION [CR 2007-3648]

HONORABLE BARRY SIMS,
JUDGE

AFFIRMED

Wilbert Johnson was convicted by a Pulaski County jury of felony breaking or entering, misdemeanor theft of property, and misdemeanor fleeing. He was sentenced to a total of fifteen years' imprisonment. On appeal, Johnson argues that the trial court erred in not granting his motion for directed verdict because there was insufficient evidence to support his conviction for breaking or entering.¹ We affirm the conviction.

Alicia Benezue testified that early on the morning of August 2, 2007, she was on the front porch of her Rosetta Street house when she saw a black male walk a bicycle up to the rock wall at the edge of her neighbor's house across the street, lean the bicycle on

¹Johnson concedes in his brief that he made no directed-verdict motions with respect to the theft of property and fleeing offenses to the trial court.

the wall, and walk between the houses toward her neighbor's tool shed in the back yard. She said she then heard loud noises and called the police. When a police officer arrived, Benezue showed him where the man had gone; while she was standing in the middle of the street, she saw the man come running from the other side of the house and she screamed, "here he is" and ran to her porch. She was unable to identify Johnson as the person on the bicycle, but she said that the person who leaned the bicycle on the wall was the same person who got on it and fled from the police. Benezue also identified the bicycle found with Johnson as the one that had been placed by the wall.

Little Rock Police Officer David Caplinger testified that he responded to the August 2, 2007 suspicious-person call, and he met with Benezue, who told him that she had observed a man going up the driveway and that his bicycle was against the rock wall. As Caplinger approached the driveway, he noticed a lawnmower with a leaf blower and a telescope stacked on top of it. He said that the back gate was open and he was about to enter the back yard when he heard Benezue yell something, and he ran toward the front yard. Caplinger testified that as he ran back toward the street, he saw a black male run across the driveway in front of him; Caplinger yelled for the man to stop, but the man jumped on the bicycle and headed in a southerly direction. Caplinger gave chase on foot and maintained constant sight of the bicyclist until an officer in a patrol car took over the chase. Caplinger stated that although he was not present when Johnson was taken into custody, he saw Johnson later and confirmed that he was the person who had jumped onto the bicycle and fled.

Officer Eric Temple of the Little Rock Police Department testified that he was called to assist Officer Caplinger, whom he observed chasing a black male on a bicycle southbound off Rosetta Street. Temple said that he was in his patrol car when he first made contact with the bicycle, that he actually almost hit the black male on the bicycle, and that he got a good look at the rider when he almost hit him. Temple identified the rider as Johnson. Temple said that the rider crossed numerous yards and jumped curbs in his flight from the police, and that he lost the rider when the rider crossed a pedestrian bridge over Interstate 630, which Temple was unable to cross in his patrol car; however, approximately five minutes later, he, Temple, again made contact with the individual on the bicycle in the area of 13th and Brown Streets, riding southbound. Temple identified both the bicycle and the rider as the ones that he had been chasing, and he stated that when apprehended, Johnson was “completely drenched” with sweat from head to toe, and that one of the bicycle tires was damaged.

Ken Bridges, the victim, testified that on August 2, 2007, his storage shed was unlocked, and that his lawnmower, telescope, and weed eater were inside the shed when he went to bed; however, when the police knocked on his door, he found those items removed from his shed and in the driveway. Bridges stated that to get these items, a person would have to move items that were in front of the gate to his back yard, open the gate, and then enter the storage shed located in his back yard. Bridges could not say that Johnson was the person who broke into his shed, but he said that he did not know

Johnson and would not have given him permission to be in his back yard or in his shed or to do anything with his lawnmower, weed eater, or telescope.

After Bridges's testimony, the State rested and Johnson moved for a directed verdict, arguing that the State had not proved that he was the individual who had broken into the shed because there had been no identification of him by any of the State's witnesses. This motion was denied. The defense rested without calling any witnesses and again renewed its motion for directed verdict, which was again denied. The jury then found Johnson guilty of felony breaking or entering, misdemeanor theft of property, and misdemeanor fleeing. He now appeals, arguing that there was insufficient evidence to support his conviction for breaking or entering.

A motion for directed verdict is a challenge to the sufficiency of the evidence. *Simmons v. State*, 89 Ark. App. 34, 199 S.W.3d 711 (2004). To determine if evidence is sufficient, there must be substantial evidence, direct or circumstantial, to support the verdict. *Id.* Substantial evidence is that which is of sufficient force and character to compel a conclusion one way or the other with reasonable certainty, without speculation or conjecture. *Mayo v. State*, 70 Ark. App. 453, 20 S.W.3d 419 (2000). Evidence of guilt is not less because it is circumstantial; the evidence must exclude every other reasonable hypothesis other than the guilt of the accused, and that is a question for the trier of fact to decide. *Ross v. State*, 346 Ark. 225, 57 S.W.3d 152 (2001). In reviewing a challenge to the sufficiency of the evidence, this court views the evidence in the light most favorable to the State and considers only the evidence that supports the conviction. *Simmons, supra.*

Arkansas Code Annotated section 5-39-202(a)(1) (Supp. 2007) provides, in pertinent part, that a person commits the offense of breaking or entering if, for the purpose of committing a theft or felony, he breaks or enters into any building or structure. In this case, Johnson does not contend that Bridges's shed was not broken into—he argues that no one saw him break or enter into the shed, so his conviction is based upon speculation and conjecture. His argument is unpersuasive.

We hold that the circumstantial evidence presented by the State is sufficient to sustain Johnson's conviction for breaking or entering. Alicia Benezue testified that after she watched a black male walk up the driveway of her neighbor's house, she heard loud noises, prompting her to call the police. She testified that the same person who arrived on the bicycle also fled from the police on the bicycle after the police responded to her call, and she recognized the bicycle found with Johnson as the one she had seen by the rock wall at her neighbor's house. Furthermore, Officer Temple identified Johnson as the person who was fleeing on the bicycle, stating that he almost hit him as he fled, that Johnson was the same individual who was apprehended a short while later with the bicycle, and that Johnson was "completely drenched" in sweat from head to toe. We hold that this circumstantial evidence is sufficient to support Johnson's conviction for breaking or entering.

Affirmed.

GRUBER and MARSHALL, JJ., agree.